DOCUMENT RESUME

ED 477 393 EC 309 610

AUTHOR	Tschantz, Jennifer
TITLE	Funding Formula and the Fiscal Provisions for Part B: A Policy Analysis.
INSTITUTION	National Association of State Directors of Special Education, Alexandria, VA.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE	2002-02-00
NOTE	32p.; Prepared for Project FORUM.
CONTRACT	H326F000001
AVAILABLE FROM	National Association of State Directors of Special Education, Project Forum, 1800 Diagonal Rd., Suite 320, Alexandria, VA 22314. Tel: 703-519-3800; Fax: 703-519-3808; e-mail: carla@nasdse.org. For full text: http://www.nasdse.org/forum.htm
PUB TYPE	Guides - Non-Classroom (055) -- Information Analyses (070)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	Compliance (Legal); *Disabilities; *Educational Legislation; Educational Policy; Elementary Secondary Education; *Federal Aid; Federal Legislation; Federal Regulation; *Financial Support; *Funding Formulas; *Special Education; State Departments of Education
IDENTIFIERS	*Individuals with Disabilities Educ Act Amend 1997

ABSTRACT

This policy analysis examines how states are implementing the substantially changed requirements relating to the distribution of federal IDEA (Individuals with Disabilities Education Act) Part B funds (Sections 611 and 619) as set forth in regulations issued in 1999. Interviews were conducted with nine state education agencies (SEAs) on the effect of these IDEA provisions. First, the paper provides background information on the current funding formula used to distribute Section 611 funds from the federal level to the state level. Next, the interview and state selection process is reviewed. Then the paper presents the interview findings along with descriptions of the relevant IDEA provisions, including recommendations for changes in the IDEA fiscal provisions. The final section includes a brief summary of the findings. Many references to the IDEA regulations are included, some in the text and some in the six appendices, which also provide the project's interview protocol. (DB)

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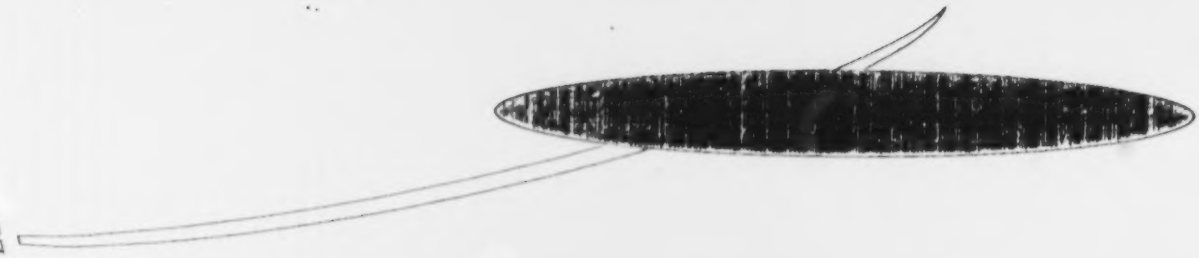

Funding Formula and Fiscal Provisions for Part B: A Policy Analysis

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February 2003

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Jennifer Tschantz, Ph.D.

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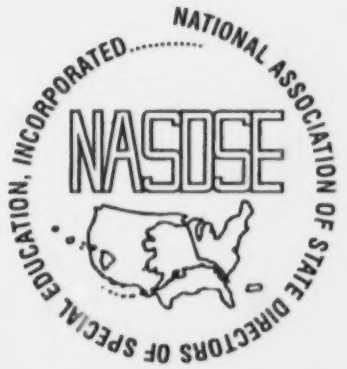

Prepared for:

Project FORUM
National Association of State Directors of Special Education (NASDSE)
1800 Diagonal Road - Suite 320
Alexandria, VA 22314

Year 1 Deliverable 1-3A
Under Cooperative Agreement # H326F000001
Office of Special Education Programs (OSEP)
U.S. Department of Education

Project FORUM at National Association of State Directors of Special Education (NASDSE) is a cooperative agreement funded by the Office of Special Education Programs of the U.S. Department of Education. The project carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback and develop conceptual frameworks related to critical topics in special education.

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Ph: 703-519-3800 ext. 312 or Email: carla@nasdse.org

Acknowledgments

Project FORUM extends its sincere appreciation to the individuals listed below who were interviewed for this document and reviewed an earlier draft. Their review served to enrich the quality and accuracy of the information. Acknowledgement of these individuals does not necessarily indicate their endorsement of this final document.

State Departments of Education:

Arizona
Exceptional Student Services
Connie Hill
Steve Mishlove

Colorado
Lorrie Harkness
Special Education Services
Charm Paulmeno
Grants Fiscal Management

Connecticut
Special Education and Pupil Services
George Dowaliby
Patrick Shaughnessy

Kansas
Student Support Services
Carol Dermyer

New Hampshire
Special Education Technical Support
Ralph Tilton

New Jersey
Special Education Programs
Cecelia Downey
Pat Holcomb Gray

Ohio
Office for Exceptional Children
Ray Cook
Ellen Gow
Edith Greer
Chuck Kessler
Tom Lather
Deb Telfer

Oregon
Office of Special Education
Bruce Bull
Brian Johnson (contractor)
Steve Johnson

South Carolina
Office of Exceptional Children
Carolyn Boney

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Funding Formula and Fiscal Provisions for Part B: A Policy Analysis

Scope of Work

Background

The 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA) and the regulations issued in 1999 substantially changed the requirements related to the distribution of federal IDEA Part B funds. These changes impacted funding formulas used to distribute federal funds to and within states for both Part B §611 (programs for students 3 through 21) and §619 (programs for children 3 through 5). Additionally, the 1997 amendments to IDEA created several flexibility options for states to use in their within-state allocations; clarified the requirements for services and funds for children parentally placed in private schools; established provisions for children with disabilities in public charter schools; outlined capacity building grants for local education agencies (LEAs); created maintenance of effort requirements for states; and changed the maintenance of effort requirements for LEAs.

In a previous document, Project FORUM at the National Association of State Directors of Education (NASDSE) provided an overview of the revised §619 formula (impacting preschool special education) and the perceptions of several §619 state-level staff regarding the impact of the changes (Project FORUM, 1999). The purpose of this document is to provide a brief background on the within-state distribution and use of §611 funds (for Part B, ages 6 through 21) outlined in the 1997 amendments to IDEA, and to report the findings from interviews conducted with nine state education agencies (SEAs) on the impact of these IDEA provisions. Project FORUM conducted these interviews and developed this document through its Cooperative Agreement with the U.S. Department of Education Office of Special Education Programs (OSEP).

First, the current funding formula used to distribute §611 funds from the federal level to state level is presented as background information. Next, the interview and state selection process is reviewed. Then, the interview findings are presented along with descriptions of the relevant IDEA provisions, including recommendations for changes to the IDEA fiscal provisions. The final section includes a brief summary of the findings and concluding remarks. This document contains many references to the IDEA regulations—some of the cited regulations are included directly in the text and some are included in Appendices.[1]

§611 Federal to State Funding Formula

Prior to the passage of the 1997 amendments to IDEA, federal funds were distributed on the basis of "child count," the number of students with disabilities receiving services on a specified date. This type of funding formula was frequently criticized as an incentive for over-identifying children for special education services (Jones and Aleman, 1997). The formula revisions in the 1997 amendments ended the reliance on child count data and substituted a population factor, plus a poverty factor, making the formula much more complex.

[1] The IDEA regulations issued in 1999 are referenced in this document instead of the IDEA statute since the regulations incorporate the statutory language and are more commonly used in the field.

The formula changes for §611 (federal to state and state to local distribution) went into effect in fiscal year 2000. That is, the new permanent formula went into effect beginning with the first fiscal year for which the amount appropriated under §611(j) of IDEA exceeded $4,924,672,200 (see 34 CFR §300.706(a) in Appendix A). The new formula currently used to distribute funds from the federal to state level is outlined in 34 CFR §§300.706-300.709 (see Appendix A). Under the new formula, first the amount each state received for the base year, the year before the formula went into effect, is allocated to each state. Then, any new federal dollars beyond the base amount, 85 percent are distributed on the basis of the state's relative population of children aged 3-21 (population factor) and 15 percent are distributed on the basis of a poverty factor. Distribution of federal funds from the SEA to its LEAs is similar (see 34 CFR §§300.602 and 300.711-300.712 in Appendix B) and is discussed further in this document, together with other IDEA fiscal provisions and relevant interview findings.

State Selection and Interview Process

Through in-depth interviews with nine SEAs, Project FORUM examined the impact on individual states of the current Part B §611 sub-state funding formula and other fiscal provisions outlined in the 1997 amendments to IDEA. The purpose of this activity was to explore the positive and negative experiences states have had with these IDEA provisions in order to inform the upcoming reauthorization of IDEA.

Initially, all state directors of special education were contacted via e-mail to determine which states would be interested in participating in Project FORUM's examination of the funding formula. Seventeen state directors expressed interest. From these 17, Project FORUM selected states to obtain a diverse sample in terms of size (geography and population) and location (region of the country). In order to minimize burden on states, Project FORUM did not select any of the six states that were part of the audit of state compliance with the funding formula requirements of IDEA conducted by the U.S. Department of Education Office of Inspector General.[2]

The nine participating states were: Arizona, Colorado, Connecticut, Kansas, New Hampshire, New Jersey, Ohio, Oregon and South Carolina. Interviews were scheduled through each state's director of special education, who decided whether other state staff should participate. The number of interviewees varied across the nine states from one to six SEA staff.

The interview protocol included 21 questions addressing six topic areas corresponding to specific fiscal or other related provisions in the 1997 reauthorization of IDEA: state data use and availability for calculating sub-state allocations; distribution of funds to LEAs; flexibility options for sub-state allocations; services for children parentally placed in private schools; payments to charter schools; capacity building funds; and maintenance of state and local financial support for special education and related services. A copy of the interview protocol was e-mailed to each state director prior to the interview and is included in Appendix C.

[2] This final audit report (Control Number ED-OIG/A06-B0029) was issued on December 19,2002 and can be found at http://www.ed.gov/offices/OIG/AuditReports/a06b0029.doc.

Findings

The findings are reported according to the topic areas in the interview protocol described above. A brief summary of each topic area and related IDEA requirement(s) precedes each set of findings.

Sub-State Allocations: Calculating and Distributing Funds to LEAs

IDEA Requirements for Calculating Sub-State Allocations

The new funding formula used by SEAs (since 2000, the first fiscal year for which the amount appropriated under §611(j) of IDEA exceeded $4,924,672,200) to calculate sub-state allocations (distributing funds to LEAs) is outlined in 34 CFR §§300.711-712 in Appendix B. Each LEA receives a base amount (the amount it would have received in the fiscal year before this formula went into effect, if the SEA had distributed 75 percent of the state award to LEAs). Of the remaining federal funds, 85 percent are distributed to LEAs using an enrollment factor[3] and 15 percent are distributed using a poverty factor, defined in IDEA regulations as follows:

- Enrollment factor is "the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction" [34 CFR §300.712(b)(3)(i)].
- Poverty factor is the "relative numbers of children living in poverty, as determined by the SEA" [34 CFR §300.712(b)(3)(ii)].

IDEA regulations stipulate that " . . . States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty" [34 CFR §300.712(b)(3)(iii)].

Calculating the Enrollment Factor

Public enrollment: Seven of the nine SEAs reported using a statewide child count that occurs on one specific date in the fall to calculate LEA public school enrollment. The other two SEAs rely on Average Daily Membership (ADM) data also collected in the fall. All nine SEAs indicated they include child counts (or ADM data) from state-operated or other eligible facilities, such as corrections, juvenile justice, state schools, charter schools, etc. when calculating enrollment.

Private enrollment: Seven SEAs reported that a procedure to collect private school enrollment data was already in place within their agency via an enrollment count or ADM prior to needing this information to distribute §611 funds. Two of these seven said these counts are by district of student's attendance, not district of residence—one of these two uses a formula to adjust for this. The other two SEAs (of the nine) did not have a procedure in place to collect total private school enrollment data. One already collected data on private school students receiving special

[3] The federal to state allocation formula includes a population factor, whereas the state to local allocation formula includes an enrollment factor.

education and used this count as best available data. In the other state, the special education division began collecting private school enrollment data as a result of the funding formula changes.

Calculating the Poverty Factor

Seven SEAs use a count of those students eligible for free and reduced lunch to determine the relative numbers of children living in poverty in each LEA. One of these seven adjusts its free and reduced lunch count for high school. This state believes the count is not an accurate representation of high school-age students living in poverty since high school students tend not to take full advantage of school lunch programs. Another of these seven applies its state's average for free and reduced lunch when a LEA count is not available. The two other SEAs use different data sources including: two year-old state welfare data (a six-month average of children ages 5 to 17 receiving state welfare); and state employment and family poverty data.

Impact on LEAs

Three of the nine SEAs reported that some of their LEAs experienced significant reductions in federal funds under the current sub-state allocation formula for a variety of reasons. For example, one SEA indicated that the establishment of new charter schools and restructuring of districts lowered the base payment for existing LEAs, and LEAs with missing poverty data experienced lower allocations. Three SEAs that reported reductions in some LEA allocations used their state set-aside funds to supplement allocations to LEAs experiencing reductions; therefore the reductions were not felt at the local level.

The other six SEAs reported that none of their LEAs experienced significant reductions in federal funds as a result of the new formula. However, four of these six reported that some LEAs received smaller increases than other LEAs. Since the total amount of federal IDEA funds has been increasing, these LEAs have not experienced reductions. One of the four SEAs reporting that some LEAs received smaller increases expressed concern that over time the funding disparities across some LEAs will grow.

Only one state reported that a small number of LEAs received more federal funds under the 1997 formula than they could use. This happened in small districts with no students receiving special education, but because these small districts have an enrollment and poverty factor, they receive IDEA funds. However, since these LEAs were part of a consortium, federal IDEA funds were added to the pooled funds to support special education programs among other districts in the consortium.

Problems/Concerns with Data

All but two SEAs reported problems in determining which data to use and/or in obtaining and using the data to distribute funds under the new formula. Concerns expressed by these seven SEAs varied and were state specific. The following list describes the types of problems encountered and the number of SEAs that identified each:

- accuracy of data and how recently data were collected (three SEAs);
- calculating the poverty factor for other entities, such as state schools and programs run by other agencies—corrections, juvenile justice, MRDD, etc. (two SEAs);
- lack of a state-wide system to collect private school enrollment data (two SEAs);
- private school enrollment data collected by school/district of attendance not school/district of residence (two SEAs);
- significant administrative time needed to gather and analyze data, including time spent accessing data from multiple offices (two SEAs);
- distribution formula not easily understood by LEA administrators and school boards leading to conflict between SEA and an LEA (two SEAs);
- using free and reduced lunch counts as the poverty indicator for high school because high school students tend not to fully participate in school lunch programs (one SEA);
- missing data from LEAs (one SEA);
- awards to LEAs with no special education students (one SEA); and
- inequities in funding for LEAs with similar responsibilities and increasing funding disparities across some LEAs over time (one SEA).

Flexibility Options

IDEA Requirements for State Flexibility Options

The IDEA regulations outlined several state flexibility options for allocating funds to LEAs. These are described below.

(a) The option to reduce or withhold IDEA funds if an LEA is not in compliance with IDEA 1997:

> If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in 34 §§300.220-300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement [34 CFR §300.197(a)].

(b) The option of requiring LEAs to establish joint eligibility with another LEA:

> An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities [34 CFR §300.190(a)].

(c) The option to reallocate IDEA funds not needed by an LEA:

> If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve [34 CFR §300.714].

Use of IDEA Flexibility In Sub-State Allocations

Four of the nine SEAs reported they have not yet used the option to reduce or withhold IDEA funds, although one of these four is considering invoking this provision. Two of the nine SEAs have threatened to withhold funds from an LEA or initiated action to do so. Three of the nine SEAs have withheld funds from LEAs for a brief time. Those that have used or threatened to use this option reported it was effective in bringing LEAs into compliance.

Two of the nine SEAs reported using the option of requiring some LEAs to establish joint eligibility with another LEA. The other seven SEAs do not require joint eligibility, but five of these do provide joint eligibility as an option for LEAs. These seven SEAs reported many LEAs take advantage of this option.

None of the participating nine SEAs have used the third option of reallocating IDEA funds not needed by an LEA.

Private School Students with Disabilities

IDEA Requirements for Private School Students

The IDEA regulations clarified that "To the extent consistent with their number and location in the State, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B of the Act . . ." [34 CFR §300.452 (a)]. Private school children eligible under this provision are defined as, " . . . children with disabilities enrolled by their parents in private schools . . ."[34 C.F.R §300.450]. In order to meet this requirement, each LEA must spend a proportionate amount of its grant for these children calculated as follows:

> For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(g) of the Act as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21 [34 CFR §300.453(a)(1)].

Additionally, the IDEA regulations stipulate that LEAs work with private schools to determine how the funds allocated for these children will be used:

> Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding under §300.453, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide—(i) Which children will receive services under §300.452; (ii)What services will be provided; (iii) How and where the services will be provided; and (iv) How the services provided will be evaluated [34 CFR §300.454(b)(1)].

Determining Special Education Services for Private School Students

Five of the nine SEAs reported their LEAs are experiencing no problems determining special education and related services support required for children who have been placed in private schools by their parents. The other four SEAs reported some problems. The majority of the problems are state specific. However, two SEAs reported that explaining the IDEA provisions on private school children with disabilities to parents, LEAs and/or private schools is difficult. This is especially true when a LEA with a history of providing more than its proportional share of funds for services to children placed by their parents in private schools reduces services below the pre-1997 level, thus upsetting parents. Two SEAs expressed concern that the private school provisions involve a very small amount of money but consume a great deal of administrative time at both the SEA and LEA levels.

The following additional problems were identified by one state each:

- difficulty locating private schools serving children with disabilities;
- difficulty identifying additional services to meet the proportional share requirement due to a state program that provides certain services to non-public students;[4]
- no consistency across and within LEAs in determining services for these students;
- state law prohibits the use of state or local funds to be used to meet this requirement; and
- difficulty determining the exact amount to spend due to timing of funding installments and data inaccuracies.

Monitoring LEAs on Services for Private School Students

Seven of the nine participating SEAs reported no problems and made no comments on monitoring LEAs to determine compliance with these private school children requirements. One of the two remaining SEAs reported that they are beginning to create strategies to examine local implementation of these provisions and could not yet comment on monitoring these requirements. The other SEA reported that, since LEAs may use local, state or federal funds to meet the proportional share requirement in their state, it is difficult to determine if the requirement is met since the state tracks only federal funds.

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[4] This state has a specific state-funded program to provide many special education services for all children with disabilities in private schools. A state law prohibits the LEAs from considering these state funds as their proportional share. LEAs struggle with identifying services they can provide beyond the state-funded program and therefore struggle with meeting the proportional share requirement.

IDEA Funds to Public Charter Schools

IDEA Requirements for Public Charter Schools

Charter schools are a relatively new component of the public education system and are required to comply with all IDEA requirements. Students with disabilities who attend public charter schools are entitled to benefit from federal special education funding on the same basis as all other public school students. However, state laws differ widely on the legal identity assigned to charter schools for special education—some are considered to be independent LEAs, while others are part of another LEA.

As a result of concerns about how states were meeting their obligations to provide federal funds to public charter schools for children with disabilities, two important provisions were included in the IDEA regulations: "Children with disabilities in public charter schools" [34 CFR §300.312] and "Treatment of charter schools and their students" [34 CFR §300.241] (see Appendix D). The guiding principle is "Children with disabilities who attend public charter schools and their parents retain all rights under [Part B of IDEA]" [34 CFR §300.312(a)]. In essence, IDEA requires that a charter school must be treated in the same way as any other equivalent entity of the state public education system for purposes of IDEA funding.[5]

Calculating/Making Payments to Public Charter Schools

Of the nine participating SEAs, eight have public charter schools in their state. The number of these schools varies across the eight states from seven to 300. In three of these eight states, public charter schools are considered their own LEA and therefore receive IDEA funds directly from the SEA. Only one of these three SEAs reported problems making payments to charter schools that are their own LEA. This state indicated that problems with payments could arise if a charter school changes sponsoring agencies. In five of the eight states with public charter schools, the charter school is considered part of a traditional LEA. For IDEA funding purposes, these public charter schools are treated as any other school within the LEA and the five SEAs reported no problems making payments to them.

Public Charter Schools Meeting Conditions for Funding

In the three states where public charter schools are their own LEA, some of these schools have difficulty meeting the conditions for funding. The difficulties are related to submitting specific documents to meet eligibility. In one state, the SEA speculated that some public charter schools do not apply for funds for which they are eligible because it is a relatively limited amount of money. These same three SEAs have problems making payments to some new or expanding public charter schools on a timely basis due to: (a) difficulties these schools have in submitting eligibility documents; (b) differences in timelines between child count/eligibility documents and

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[5] Additionally, the 1999 Education Department General Administrative Regulations (EDGAR) require states to ensure that public charter schools opening for the first time or significantly expanding their enrollment receive the funds for which they are eligible on a formula basis in a timely manner [34 CFR §76.793]. This requirement applies to federal IDEA funds.

funding allocation schedules; (c) public charter schools not applying for funds they are eligible for; and (d) difficulties determining a student's resident district. These issues do not apply to states where public charter schools are part of an existing LEA.

Capacity-Building (Sliver) Funds

IDEA Requirements for Capacity-Building Funds

The 1997 amendments to IDEA created new sub-state grants for LEA capacity building and improvement, often referred to as sliver funds (Jones & Aleman, 1997). These grants are only available " . . .in years in which the state's allocation increases by more than the rate of inflation" (Jones & Aleman, 1997, p. 2:11), so the amount and availability of these funds varies from year to year. The IDEA regulations stipulate that these funds must be used to assist LEAs " . . . in providing direct services and in making systemic change to improve results for children with disabilities ..." [34 CFR §300.622] and outlines broad ways to do so. SEAs have flexibility in determining how to allocate these funds and can direct the funds to more targeted/specific needs within their state. The specific provisions for the local capacity-building grants are outlined in 34 CFR §§300.622-300.624 (see Appendix E).

Criteria for Allocation and Use of Capacity-Building Funds

The nine participating SEAs use a variety of methods for allocating IDEA capacity-building funds to LEAs. Three SEAs use a competitive grant process to disperse these funds, whereby LEAs send in applications in response to a request for proposals and a limited number of LEAs are awarded grants. Two SEAs rely primarily on non-competitive or targeted grants, where if LEAs meet the state established criteria, they are funded. One state allocates capacity-building funds to all LEAs based on child count. The other three SEAs use a mix of different methods including competitive grants, non-competitive or targeted grants, and formula grants to all LEAs.

Regardless of how capacity-building funds are allocated, every SEA outlined specific topics/issues LEAs have to address with these funds. These vary across states and have included: reading/literacy; link/access to general education curriculum; technology; social skills; positive behavioral supports; discipline; autism; transition; working with charter schools; promising practices; interagency agreements; coordinated services; direct services; data-based instruction; professional development; dispute resolution; alternate assessments; working with paraprofessionals; least restrictive environment; and communicating with families.

All nine SEAs reported that the capacity-building funds are beneficial. According to SEA staff these grants have " . . . helped increase LEA capacity to serve students in their district" and have " . . . assisted in pursing specific needs across the state, [which is] helpful in light of the reduction of SEA funds." For example, in one state several LEAs targeted these funds on training and developing pre-referral student improvement teams. As a result, these LEAs have seen a reduction in the number of referrals to special education as well as more appropriate referrals to special education. Several SEAs require LEAs to outline in their capacity-building grant applications the expected results and/or how they will sustain their capacity-building efforts.

State Identified Problems Administering or Using Capacity-Building Funds

Three SEAs reported no problems in the administration or use of capacity-building funds. Another three SEAs indicated that the unpredictable nature of the amount of these funds from year to year makes long-term planning difficult. Two SEAs reported difficulties with the timing of these grant allocations to their LEAs. One SEA believes that, in addition to LEAs, other entities should be eligible to apply for these funds (e.g., institutions of higher education).

Maintenance of Fiscal Effort Requirements

IDEA Requirements for Maintenance of Fiscal Effort

State Maintenance of Effort: The IDEA regulations include a new provision to ensure that states do not reduce the amount of state spending on special education from year to year:

> The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year [34 CFR §300.154(a)].

The full text of 34 CFR §300.154(a) can be found in Appendix F.

Local Maintenance of Effort: The IDEA regulations also changed the requirements for local special education funding. Previously LEAs were obligated to expend the same amount of funds from year to year, regardless of whether they were state or local funds, making LEAs responsible if their state funding dropped. Now, this stipulation applies to maintaining only local funding or the combination of state and local funding on special education from year to year [34 CFR §300.231(a)]. Additionally, the regulations provide an option to LEAs to reduce their local expenditures on special education—LEAs can count up to 20 percent of their increase in federal funding from one year to the next as local funds for the purpose of meeting the local maintenance of fiscal effort requirement [34 CFR §300.233]. This provision is in effect for fiscal years for which amounts appropriated to carry out Part B of IDEA exceed $4.1 billion, subject to certain conditions. Additional local provisions include exceptions to the local maintenance of effort requirement (e.g., departure of high-paid special education personnel or costly students) [34 CFR §300.232]. For all the local maintenance of effort requirements see 34 CFR §§300.231-300.233 in Appendix F.

Impact of Maintenance of Fiscal Effort on State Spending for Special Education

All nine states reported experiencing increases in state spending on special education since the 1997 amendments to IDEA. Seven SEAs indicated that the maintenance of state financial support for special education and related services has not impacted their state appropriations or spending for special education. One of these seven SEAs believes that the maintenance of effort

requirement could become an issue in their state in the near future, as a result of continued federal increases and stagnant state spending.

Two SEAs reported that the maintenance of effort requirement has impacted state spending for special education. In both of these states, the federal requirement prevented a reduction in state special education funding.

LEA Use of Federal Funds to Meet Maintenance of Fiscal Effort Requirement

Six of the nine SEAs reported that their LEAs do not use 20 percent of their increase in federal funds as local funding for the purpose of meeting the maintenance of effort requirement. One of these six SEAs stated that the 20 percent is not a significant amount of money. Another SEA stated that use of the 20 percent is not an option since LEAs transfer "quite a bit of" local general funds to special education funds. One of the nine SEAs is not sure whether or not its LEAs use this option.

Only two of the nine SEAs reported that some of their LEAs take advantage of this flexibility. In one of these two states, ten LEAs had difficulty meeting the maintenance of effort requirement the previous fiscal year and applying 20 percent of federal increases was helpful. In the second of nine states, 45 LEAs use the 20 percent option, but the SEA does not gather information on how LEAs use the "freed up" local funds.

Recommendations for Changing Fiscal Provisions in IDEA

The nine participating SEAs were asked if they would recommend changes to the current funding formulas or fiscal provisions in IDEA. Only one SEA suggested leaving the funding provisions alone because "changes create difficult transitions." The other eight SEAs made specific recommendations. These recommendations are outlined below. The number of SEAs making each recommendation is noted in brackets following the recommendation.

- Return to a child count formula for in-state allocations. The following reasons were cited: child count is easier to explain to stakeholders and is faster, easier and cleaner to allocate; the 1997 formula is too labor intensive and results in inequities among some districts. (Four SEAs)

- Give states more flexibility in determining how to distribute funds. Specific examples include: ability to make adjustments based on LEA need; flexibility to use child count to distribute funds to LEAs with less than 100 special education students; and flexibility to use population data instead of enrollment data. (Four SEAs)

- IDEA provisions need to be considered when any federal charter school law is revised or reauthorized. (One SEA)

- There needs to be more consistency in the amount and availability of capacity-building funds. (One SEA)

- Provide more flexibility with the state maintenance of effort requirement, given current state budgets and potential increases in federal funding. (One SEA)

- There should be no additional constraints on funds that can be retained at the state-level. (One SEA)

- There needs to be more flexibility for states in the use of funds. (One SEA)

- Consider allocating federal funds to states based on a state's level of special education funding (i.e., states that spend more on special education would receive more federal funds). (One SEA)

- Provide more guidance to states in a timely manner if there are any changes in the funding formula. (One SEA)

Summary

The findings from Project FORUM's interviews with nine states provide information on the positive and negative experiences some states have had implementing the new IDEA fiscal provisions. Additionally, the findings highlight issues that lawmakers should explore in more detail and consider for the upcoming reauthorization of IDEA.

Some participating SEAs reported problems in calculating and distributing IDEA funds to LEAs. No problems were noted in determining public school enrollment for LEAs. Difficulties did emerge in a couple of states with collecting private school enrollment data, such as the lack of an established system to collect this information and data being reported by district of attendance, not district of residence. A free and reduced lunch count is most commonly used by states as the poverty indicator for LEAs. Some concerns were voiced regarding the accuracy of poverty indicators for students in high schools, state schools and programs run by other state agencies. Since federal funds have continued to increase, LEAs have not experienced reductions in federal funds that would have resulted from level funding or a reduced total amount of funds distributed under the revised formula. It is important to note that several SEAs recommended that the sub-state distribution formula should return to a simple child count and that more flexibility should be given to states in how to distribute federal funds. Additionally, a couple of SEAs voiced concern about the increased administrative time and effort needed to distribute IDEA funds under the current formula.

SEAs were positive about the flexibility provided by the IDEA fiscal provisions. Many SEAs reported that threatening to or withholding funds from LEAs is an effective means to bring struggling LEAs into compliance with IDEA. The capacity-building funds were viewed as beneficial, but several SEAs stated that long-term planning was made difficult by the unpredictable nature of these funds. States indicated that relatively few LEAs count 20 percent of the increase in their federal funds to meet the local maintenance of fiscal effort requirement, thus this flexibility option has had little impact. SEAs reported that state spending on special education has increased since the 1997 amendments to IDEA and that the state maintenance of effort requirement has had minimal impact on state allocations.

SEAs have experienced minimal problems with LEAs meeting the IDEA provisions related to children with disabilities in private schools and allocating funds to charter schools. A couple of SEAs reported that effectively communicating the private school provisions to parents was sometimes difficult. Some charter schools that legally are their own LEAs encountered problems meeting conditions for funding and, as a result, difficulties arose for SEAs in making payments to those charters on a timely basis.

Concluding Remarks

Project FORUM conducted interviews with representatives from nine states to inform discussions on possible changes to the IDEA fiscal provisions during the upcoming reauthorization. Additional information from other states on their experiences with the current IDEA fiscal provisions should be gathered to confirm the findings from this data collection. Specifically, inquiries with other states could establish: the extent of problems with data used to determine private school enrollment and poverty, whether other states have had positive or negative experiences with the current sub-state funding formula and whether other states have had success in applying a sanction of withholding funds (or threatening to do so) to bring LEAs into compliance. Additionally, the overwhelming positive comments about the use of capacity-building funds should be validated with other states. Since several of the participating SEAs stated that the unpredictable nature of these funds is problematic, exploration of how these funds could be made more consistent should be considered.

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Appendix A
IDEA Regulations for Federal to State Funding Allocations

§300.706 Permanent formula.

(a) *Establishment of base year.* The Secretary allocates the amount described in §300.703(a) among the States in accordance with §§300.706-300.709 for each fiscal year beginning with the first fiscal year for which the amount appropriated under 611(j) of the Act is more than $4,924,672,200.

(b) *Use of base year.* (1) *Definition.* As used in this section, the term *base year* means the fiscal year preceding the first fiscal year in which this section applies.

(2) *Special rule for use of base year amount.* If a State received any funds under section 611 of the Act for the base year on the basis of children aged 3 through 5, but does not make FAPE available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary computes the State's base year amount, solely for the purpose of calculating the State's allocation in that subsequent year under §§300.707-300.709, by subtracting the amount allocated to the State for the base year on the basis of those children.

(Authority: 20 U.S.C. 1411(e)(1) and (2))

§300.707 Increase in funds.

If the amount available for allocations to States under §300.706 is equal to or greater than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in §300.708, the Secretary--

(1) Allocates to each State the amount it received for the base year;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of FAPE under Part B of the Act; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1411(e)(3))

§300.708 Limitation.

(a) Allocations under §300.707 are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for the base year; and

(B) One-third of one percent of the amount by which the amount appropriated under section 611(j) of the Act exceeds the amount appropriated under section 611 of the Act for the base year; or

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(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under §300.707 may exceed the sum of -

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocations to States under §300.703 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full those allocations are ratably reduced, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1411(e)(3)(B) and (C))

§300.709 Decrease in funds.

If the amount available for allocations to States under §300.706 is less than the amount allocated to the States under section 611 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for the base year, each State is allocated the sum of -

(1) The amount it received for the base year; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over the base year bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to or less than the amount allocated to the States for the base year, each State is allocated the amount it received for the base year.

(2) If the amount available is insufficient to make the allocations described in paragraph (b)(1) of this section, those allocations are ratably reduced.

(Authority: 20 U.S.C. 1411(e)(4))

Appendix B
IDEA Regulations for State to LEA Funding Allocations

§300.602 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration in accordance with §§300.620 and 300.621 and other State-level activities in accordance with §300.370.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 611 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(f)(1)(A) and (B))

§300.711 Subgrants to LEAs.

Each State that receives a grant under section 611 of the Act for any fiscal year shall distribute in accordance with §300.712 any funds it does not retain under §300.602 and is not required to distribute under §§300.622 and 300.623 to LEAs in the State that have established their eligibility under section 613 of the Act, and to State agencies that received funds under section 614A(a) of the Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613 of the Act, for use in accordance with Part B of the Act.

(Authority: 20 U.S.C. 1411(g)(1))

[See Appendix E for §§300.622 and 300.623]

§300.712 Allocations to LEAs.

(a) *Interim procedure.* For each fiscal year for which funds are allocated to States under §300.703(b) each State shall allocate funds under §300.711 in accordance with section 611(d) of the Act, as in effect prior to June 4, 1997.

(b) *Permanent procedure.* For each fiscal year for which funds are allocated to States under §§300.706-300.709, each State shall allocate funds under §300.711 as follows:

(1) *Base payments.* The State first shall award each agency described in §300.711 the amount that agency would have received under this section for the base year, as defined in §300.706(b)(1), if the State had distributed 75 percent of its grant for that year under section §300.703(b).

(2) *Base payment adjustments.* For any fiscal year after the base year fiscal year—

(i) If a new LEA is created, the State shall divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.706(b)(2), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs shall be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under §300.706(b)(2), currently provided special education by each affected LEA.

(3) *Allocation of remaining funds.* The State then shall -

(i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(iii) For the purposes of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1411(g)(2))

Appendix C
Project FORUM—Interview Protocol
Impact of 1997 Revised Funding Formula

1.0. Data Use and Availability:

1.1 There are a variety of sources for data on enrollment and a number of sources for data on poverty. What data are your state using to make within-state allocations of IDEA funds on the basis of enrollments and poverty?

1.2 Has your state experienced any problems in determining what data to use or in getting and/or using the data? **(If so, describe)**

2.0 Distribution of Funds:

2.1 Have any of your LEAs experienced a significant reduction in IDEA funds under the new formula? **If so,** does your state use IDEA state set-aside funds to supplement LEA formula awards for LEAs that have exceptional needs attributed to perceived inequities in the formula?

2.2 Are any of your state's LEAs receiving more funds under the IDEA formula than they can use appropriately for special education?

2.3 IDEA provides states with some flexibility in making sub-state allocations. Has your state used any of the following strategies? **(If so, give examples)**

> *2.3.1* "If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in §§300.220-300.250, the SEA shall reduce or may not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement" [§300.197(a)].
>
> *2.3.2* "An SEA may require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would be ineligible under this section because the agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities" [§300.190(a)].
>
> *2.3.3* "If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under Part B of the Act that are not needed by that local agency to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas they serve" [§300.714].

3.0 Private Schools

3.1 What problems, if any, has your state and/or its LEAs had in determining the level of special education and related services support required for children who have unilaterally been placed in private schools by their parents? (*Probe: What services are being covered or provided? if known)*

3.2 Have you had any problems in monitoring LEAs to determine compliance with this requirement?

4.0 Charter Schools

4.1 Has your state experienced any problems in calculating/making payments to charter schools that are LEAs under the IDEA ? If so, what are they?

4.2 (*If applicable)* Have any issues arisen in calculating and/or making payments for entitlements to charter schools that are part of another LEA and not identified as their own LEAs? If so, what are they?

4.3 Have charter schools had difficulty in meeting the conditions for funding and following the estimating and adjustment procedures associated with funding?

4.4 In 1999, the EDGAR regulations were changed (34 CFR Part 76, Subpart H) to require that states ensure that charter schools opening for the first time or significantly expanding their enrollment receive on a timely basis the funds for which they are eligible on a formula basis. Have any issues related to this requirement arisen in your state?

5.0 Capacity Building (sliver) funds:

5.1 What criteria is your state using to allocate IDEA capacity building and improvement funds (sliver funds) among LEAs?

5.2 How are these funds being used by LEAs, and have they been effective in doing something the state could not otherwise accomplish (i.e., do you think the sliver funds are beneficial)?

5.3 Has your state experienced any problems in administering or using these funds?

6.0 Maintenance of Effort:

6.1 Has the enactment of the IDEA requirement for maintenance of state financial support for special education and related services had any impact on state appropriations or spending on special education?

6.2 Has your state increased state spending on special education since the enactment of that requirement in 1997?

6.3 To what extent are the LEAs in your state using the authority in IDEA section 613(a)(2)(C) to count up to 20 percent of their increase in Federal funding from one year

to the next as local funds for the purpose of meeting maintenance of effort funding requirements?

6.4 Do you gather any information about how LEAs use the local funds that are freed up?

7.0 Additional Comments:

Do you have any recommendations for changing IDEA fiscal provisions or other comments?

Appendix D
IDEA Regulations for Public Charter Schools

§300.312 Children with disabilities in public charter schools.

(a) Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) If the public charter school is an LEA, consistent with §300.17, that receives funding under §§300.711-300.714, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(c) If the public charter school is a school of an LEA that receives funding under §§300.711-300.714 and includes other public schools—

(1) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of §300.241.

(d)(1) If the public charter school is not an LEA receiving funding under §§300.711-300.714, or a school that is part of an LEA receiving funding under §§300.711-300.714, the SEA is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity; however, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.600.

(Authority: 20 U.S.C. 1413(a)(5))

§300.241 Treatment of charter schools and their students.

The LEA must have on file with the SEA information to demonstrate that in carrying out this part with respect to charter schools that are public schools of the LEA, the LEA will -

(a) Serve children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

(b) Provide funds under Part B of the Act to those schools in the same manner as it provides those funds to its other schools.

(Authority: 20 U.S.C. 1413(a)(5))

Appendix E
IDEA Provisions for Capacity-building "Sliver" Grants

§300.622 Subgrants to LEAs for capacity-building and improvement.

In any fiscal year in which the percentage increase in the State's allocation under 611 of the Act exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under 611 of the Act, the amount described in §300.623 to make subgrants to LEAs, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following:

(a) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

(b) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of Part D of the Act.

(c) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources.

(d) Establishing, expanding, or implementing interagency agreements and arrangements between LEAs and other agencies or organizations concerning the provision of services to children with disabilities and their families.

(e) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

(Authority: 20 U.S.C. 1411(f)(4)(A))

§300.623 Amount required for subgrants to LEAs.

For each fiscal year, the amount referred to in §300.622 is—

(a) The maximum amount the State was allowed to retain under §300.602(a) for the prior fiscal year, or, for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under section 611; multiplied by

(b) The difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1411(f)(4)(B))

§300.624 State discretion in awarding subgrants.

The State may establish priorities in awarding subgrants under §300.622 to LEAs competitively or on a targeted basis.

(Authority: 20 U.S.C. 1411(f)(4)(A))

Appendix F
IDEA Regulations for State and Local Maintenance of Effort

§300.154 Maintenance of State financial support.

(a) *General.* The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) *Reduction of funds for failure to maintain support.* The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) *Waivers for exceptional or uncontrollable circumstances.* The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that -

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in §300.589 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) *Subsequent years.* If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section must be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

(Authority: 20 U.S.C. 1412(a)(19))

§300.231 Maintenance of effort.

(a) *General.* Except as provided in §§300.232 and 300.233, funds provided to an LEA under Part B of the Act may not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) *Information.* The LEA must have on file with the SEA information to demonstrate that the requirements of paragraph (a) of this section are met.

(c) *Standard.* (1) Except as provided in paragraph (c)(2) of this section, the SEA determines that an LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(i) Local funds only.

(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (c)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in—

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(i) The most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997; or

(ii) If later, the most recent fiscal year for which information is available and the standard in paragraph (c)(1)(i) of this section was used to establish its compliance with this section.

(3) The SEA may not consider any expenditures made from funds provided by the Federal Government for which the SEA is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the SEA in determining an LEA's compliance with the requirement in paragraph (a) of this section

(Authority: 20 U.S.C. 1413(a)(2)(A))

§300.232 Exception to maintenance of effort.

An LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to the following:

(a)(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff.

(2) In order for an LEA to invoke the exception in paragraph (a)(1) of this section, the LEA must ensure that those voluntary retirements or resignations and replacements are in full conformity with:

(i) Existing school board policies in the agency;

(ii) The applicable collective bargaining agreement in effect at that time; and

(iii) Applicable State statutes.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child -

(1) Has left the jurisdiction of the agency;

(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

(3) No longer needs the program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(Authority: 20 U.S.C. 1413(a)(2)(B))

§300.233 Treatment of Federal funds in certain fiscal years.

(a)(1) Subject to paragraphs (a)(2), (a)(3), and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceed $4.1 billion, an LEA may treat as local funds up to 20 percent of the amount of funds it is eligible to receive under §300.712 from that appropriation that exceeds the amount from funds appropriated for the previous fiscal year that the LEA was eligible to receiver under §300.712.

(2) The requirements of §§300.230(c) and 300.231 do not apply with respect to the amount that may be treated as local funds under paragraph (a)(1) of this section.

(3) For purposes of this section:

(i)(A) An LEA is not eligible to receive funds during any period in which those funds under this part are withheld from the LEA because of a finding of noncompliance under §300.197 or §300.587.

(B) An LEA is eligible to receive funds that have been withheld under §300.197 or §300.587 but are subsequently released to the LEA within the period of the funds availability.

(ii) An LEA is not eligible to receive funds that have been reallocated to other LEAs under §300.714.

(b) If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute.

(Authority: 20 U.S.C. 1413(a)(2)(C))

[64 FR 12418, Mar. 12, 1999, as amended at 66 FR 1476, Jan. 8, 2001]

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